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A. SPECIAL EDUCATION ISSUES.

1. Common Special Education Mistakes By Administrators.

- 1.1 Predetermination of placement (Avoid statements like: "Your child will be placed in a spec ed classroom."). BUT the IEP team can come to the meeting with a DRAFT IEP to be used for discussion, but make sure that it is explained to parents and their advocates that it was filled out simply to save time and to provide a basis for discussion only. ALSO: At IEP meeting, don't reject any possibility regarding placement (Never say: "Residential placement is out of the question so let's focus on what we can do here in the district."), but rather work towards the intended goal of allowing the needs of the child to direct the appropriate placement.
- 1.2 Allowing existing resources to determine services to be provided. (Don't ever say: "I'm sorry but we don't provide those services in this District.") IEP must be written without regard to the availability of services on a local level. Then, once needs are determined, then determine the placement and services required.
- 1.3 Inadequate or insufficient IEPs. (Avoid saying things like: "This IEP meeting should only take a fifteen minutes"). IEPs are not expected to be detailed like a lesson plan, and need not specify exact locations where goals/objectives/services are to be implemented. But make sure that they are adequate under the law/regs! Horror story: parents withdrew child and placed in private school after IEP failed to include present levels of performance and measurable objectives! Make sure that your special ed staff fill in all the blanks, spaces, address all of the issues, etc.
- 1.4 Failure to offer IEP to student who may be voluntarily placed in private school. ("We are happy that the parents are taking him to a private school next year (week, month etc.) because now we won't have to meet next week!") Adhere to the process and prepare the IEP which can then be sent to the private school. ALSO--WATCH OUT: New family moves to district and meets several times with school personnel to discuss possible placement options but no formal IEP team meeting or IEP developed. Parents reject the district's "suggestions" and place in private school and seek tuition reimbursement even though there has not been an IEP meeting or IEP developed. Trap for unwary. Always follow the process:

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temporary placement based on incoming paperwork, but only pending a new localized IEP.

- 1.5 Formal voting at IEP Team meeting. (Parents will sue if it is a formal vote: "Looks like we win on a vote of 5 to 2!") Decisions are to be made by *consensus* and not formal voting. Parents and their consultants are equal partners with school personnel. If the IEP Team cannot achieve a consensus, the District must provide the parents with prior written notice of its proposals and refusals, or both, regarding the IEP. Parents can then choose to seek due process hearing on any disagreements. Always use "minority" statement if disagreement.
- 1.6 Skipping a manifestation hearing. (In event of a disciplinary issue, avoid skipping to conclusions like: "His disability is vision impairment but he knows right from wrong, so there is no need for a manifestation hearing on the issue of bringing a knife to school.") Manifestation hearings must be held and varying procedures apply depending upon whether the suspension will exceed 10 days, it is an expulsion for drugs/weapons, or an expulsion for other code violations.
- 1.7 Ignoring hints of unilateral placements. If a parent strenuously objects in an IEP team meeting as to the proposed placement, this could be a red-flag that the parent will be seeking reimbursement from the District for a unilateral private school placement. Parents are only entitled to reimbursement for unilateral private placements if (a) the District fails to provide FAPE, and (b) if the parents give advance notice of their objection to the proposed placement. Therefore, if a red flag is waived, don't adjourn the IEP meeting until the parents' concerns are addressed. Don't get bushwhacked. Make sure that you address their issues/concerns. Keep the process moving and dealing with concerns.

2. QUICK OVERVIEW OF 2004 RE-AUTHORIZATION.

- 2.1 Directs paperwork study for report to Congress. Comptroller General is to study and report to Congress findings on IDEA's requirements and determine what can be done to reduce paperwork burden on educators.
- 2.2 Requires all special ed teachers to be highly qualified by 2006-2007 school year. However, makes it clear that no child has a private right of legal action against a district if teacher is not highly qualified, but parents could file state complaint regarding staff qualifications.

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- 2.3 Makes it easier for parents to get public school services for voluntarily placed students in private schools.
- 2.4 Authorizes districts to utilize federal funds to be paid over to charter schools.
- 2.5 Harmonizes requirements for academic achievement/functional performance to conform IDEA with accountability systems of NCLB to make sure that each subgroup is making AYP towards reaching proficiency.
- 2.6 Increases federal funding up to 40% (but in the future!).
- 2.7 **Provides that districts will not be in violation of FAPE if they don't provide services when parents reject them.**
- 2.8 District does not have to conduct a re-evaluation if both the parents and the district agree that it is unnecessary.
- 2.9 **Requires academic information to be gathered in the evaluation process.** Also requires IEPs to include statements on present levels of academic achievement.
- 2.10 Revises rules regarding eligibility determinations to provide that a lack of scientifically based reading instruction can not be the determinant factor for deciding whether a child is a child with a disability.
- 2.11 **Requires IEP to state the needed accommodations for standardized testings, and if alternate assessments required, then IEP must explain why and why that is appropriate for the child.**
- 2.12 **Allows members of IEP team to be excused from participation under certain circumstances.**
- 2.13 **Allows district and parents to agree to modify a current IEP without having to convene a formal meeting.**
- 2.14 **Allows districts to file due process complaints!**
- 2.15 **Requires parties to file a formal written complaint and to give copy/notice to other before a due process hearing can be held. Will make the process more streamlined by narrowing issues and informing the**

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parties as to exactly what *are* the issues. (But can amend the complaint before the hearing with permission of the hearing officer).

- 2.16 Restricts findings of procedural inadequacies resulted in denial of FAPE to those instances where the procedural inadequacies: (1) compromised the child's right to FAPE; (2) seriously hampered the parents' opportunity to participate in the process; OR (3) caused a deprivation of educational benefits.
- 2.17 Finally establishes a 90 day deadline in which to file an appeal of a due process hearing to federal court.
- 2.18 Prohibits award of attorneys fees in connection with a resolution session between the parties.
- 2.19 Allows up to a 10 day suspension for any disciplinary problem without requiring manifestation hearing. Revises and streamlines disciplinary process for beyond 10 days, especially with respect to violations based upon weapons/drugs. Revises definitions for manifestation determinations.
- 2.20 Revises child-find procedures to create a "seamless system" from birth to school age.

3. SECTION 504.

3.1 WHAT IS IT? Section 504 refers to that portion of the federal Vocational Rehabilitation Act of 1973 (29 USC Sec. 705, *et seq.*) which prohibits discrimination by federal grant/fund recipients against those with "handicaps" from participating in their programs. It is NOT a separate educational requirement, like IDEA, although there is some overlap. It is not a separate statutory right such as the right to be free from employment discrimination. Compliance with IDEA means compliance with 504, but not the reverse. The exact, simple and concise wording of Section 504 is as follows:

No otherwise qualified individual with a disability in the United States, as defined [by the Act], shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.....

3.2 DEFINITION OF HANDICAP. The term "handicap" means any person "who (i) has a physical or mental impairment which substantially limits one or more

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major life activities; (ii) has a record of such impairment; or (iii) is regarded as having such an impairment.” There is no separate “listing” or classifications of handicaps such as there are classifications of disabilities in IDEA. The term “major life activities” includes functions such as taking care of one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.” Examples of “handicaps”: HIV/AIDS, tuberculosis, arthritis, asthma, allergies, diabetes, ADD/ADHD, temporary disabilities, cancer, etc. etc,

3.3 MORE NARROW THAN IDEA. IDEA creates mandatory affirmative obligations on school districts to provide that which is needed by a child with disabilities to obtain a free and appropriate education. However, 504 is framed in the negative: it forbids discrimination or exclusion from educational programs. Simply put, 504 does not create any *additional* rights to education, but only prohibits districts from denying a student from participation in any educational program/activity simply due to handicaps.

3.4 PARENTS, NOT JUST STUDENTS! Applies to general public, including parents! Thus, even without the Americans with Disability Act, the District must not discriminate with respect to its facilities or programs; e.g. wheelchair bound parent must have access to school for conferences and other programs to which parents and/or the public are invited (plays, concerts, awards programs, etc.).

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SUMMARY OF KEY PROVISIONS:

Purpose

To prohibit discrimination on the basis of a disability in any program receiving federal funds including education. It is a REGULAR EDUCATION issue, not a special ed issue.

Special Education vs. Regular Education

A student is eligible so long as he/she meets the definition of qualified handicapped person "i.e., has or has had a physical or mental impairment which substantially limits a major life activity, or is regarded as handicapped by others.) The student is not required to need/be eligible for special education to qualify.

Funding

Additional funds are not provided for these services.

General Notice

504 requires "Child Find" activities. District must include notice of nondiscrimination in its handbooks, and must designate the District's 504 coordinator(s).

Notice of Consent

A notice is required to the parent or guardian with respect to identification, evaluation and placement. Requires notice before a "significant change in placement." Consent not required, but if a handicapping condition under IDEA is suspected, those regulations must be followed.

Evaluations

Require notice, not consent. Requires periodic re-evaluations. Requires a re-evaluation before a significant change in placement. Does not provide for outside independent evaluations.

Re-evaluation

District must establish procedures for periodic re-evaluation of students receiving 504 services/accommodations. Re-evaluations under IDEA meet this requirement.

Determination of Eligibility Program and Placement

Done by a group of persons knowledgeable about the child, the evaluation data, and placement options. Parental participation is not mentioned in the regulations.

Discipline

504 contains NO provision regarding current placement. Student is subject to same disciplinary procedures.

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Grievance Procedure

District must designate an employee to be responsible for assuring District compliance with Section 504 and provide a grievance procedure (an informal hearing before a District staff member) for parent, students, and employees.

Due Process

To provide impartial hearings for parents or guardians who disagree with the identification, evaluation or placement of students with disabilities. Hearings conducted at the local level by an impartial person not connected with the district. IDEA procedures satisfy 504.

Enforcement

Enforced by the Office of Civil Rights by complaint investigation and monitoring activities.

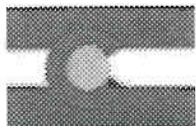


100 EFFECTIVE ACCOMMODATIONS/SERVICES

Listed below are some of the more frequent recommendations that teachers have found to be effective for children with disabilities.

1. Provide study carrels.
2. Use room dividers.
3. Provide headsets to muffle noise.
4. Seat child away from doors/windows.
5. Seat near model (child or teacher).
6. Provide time-out area.
7. Rearrange child groups (according to instructional needs, role models, etc.).
8. Group for cooperative learning.
9. Vary working surface (e.g., floor or vertical surface such as blackboards).
10. Simplify/shorten directions.
11. Give both oral and written directions.
12. Have child repeat directions.
13. Have child repeat lesson objective.
14. Ask frequent questions.
15. Change question level.
16. Change response format (e.g., from verbal to physical; from saying to pointing).
17. Provide sequential directions (label as first, second, etc.).
18. Use manipulatives.
19. Alter objective criterion level.
20. Provide functional tasks (relate to child's environment).
21. Reduce number of items on a task.
22. Highlight relevant words/features.
23. Use rebus (picture) directions.
24. Provide guided practice.
25. Provide more practice trials.
26. Increase allocated time.
27. Use a strategy approach.
28. Change reinforcers.
29. Increase reinforcement frequency.
30. Delay reinforcement.
31. Increase wait time.

32. Use firm-up activities.
33. Use specific rather than general praise.
34. Have a peer tutor program.
35. Provide frequent review.
36. Have child summarize at end of lesson.
37. Use self-correcting materials.
38. Adapt test items for differing response modes.
39. Provide mnemonic devices.
40. Provide tangible reinforcers.
41. Use behavioral contracts.
42. Establish routines for handing work in, heading papers, etc.
43. Use timers to show allocated time.
44. Teach self-monitoring.
45. Provide visual cues (e.g., posters, desktop number lines, etc.).
46. Block out extraneous stimuli on written material.
47. Tape record directions.
48. Tape record child responses.
49. Use a study guide.
50. Provide critical vocabulary list for content material.
51. Provide essential fact list.
52. Use clock faces to show classroom routine times.
53. Use dotted lines to line up math problems or show margins.
54. Provide transition directions.
55. Assign only one task at a time.
56. Provide discussion questions before reading.
57. Use word markers to guide reading.
58. Alter sequence of presentation.
59. Enlarge or highlight key words on test items.
60. Provide daily and weekly assignment sheets.
61. Post daily/weekly schedule.
62. Use graph paper for place value or when adding/subtracting two digit numbers.
63. Provide anticipation cues.
64. Establish rules and review frequently.
65. Teach key direction words.
66. Use distributed practice.



67. Provide pencil grips.
68. Tape paper to desk.
69. Shorten project assignment into daily tasks.
70. Segment directions.
71. Number (order) assignments to be completed.
72. Change far-point to near-point material for copying or review.
73. Put desk close to blackboard.
74. Incorporate currently popular themes/characters into assignments for motivation.
75. Repeat major points.
76. Use physical cues while speaking (e.g., 1, 2, 3, etc.).
77. Pause during speaking.
78. Use verbal cues (e.g., "Don't write this down", "This is important").
79. Change tone of voice, whisper, etc.
80. Use an honor system.
81. Collect notebooks weekly (periodically) to review child notes.
82. Reorganize tests to go from easy to hard.
83. Color code place value tasks.
84. Use self-teaching materials.
85. Do only odd/or even numbered items on a large task sheet.
86. Use a primary typewriter or large print to create written material.
87. Provide organizers (e.g., cartons/bins) for desk material.
88. Teach varied reading rates (e.g., scanning, skimming, etc.).
89. Provide content/lecture summaries.
90. Use peer-mediated strategies (e.g., "buddy system").
91. Call child's name before asking a question.
92. Use extra spaces between lines of print.
93. Color code materials/directions.
94. Use raised-line paper.
95. Provide calculators.
96. Circle math computation sign.
97. Use hand signals to cue behavior (e.g., attention, responding).
98. Establish a rationale for learning.
99. Use advance organizers.
100. Help children to develop their own learning strategies.